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PRISONS (TREATMENT OF CRIME).

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11 April, 1899,—for

“COPY of Report of the Chairman of the Commissioners
of Prisons upon the TREATMENT OF CRIME IN THE
UNITED STATES.”

Home Office,
17 April 1899. }

JESSE COLLINGS.

[by E. Ruggles-Brise]

(Sir Howard Vincent.)



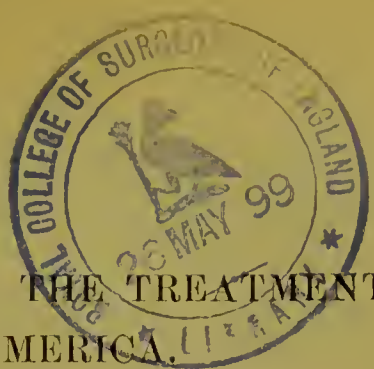
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1899.



SOME OBSERVATIONS ON THE TREATMENT OF CRIME IN AMERICA.

A REPORT TO THE SECRETARY OF STATE

BY E. RUGGLES-BRISE.

MY visit to the United States, with the object of investigating some of the leading features of the penal system or systems employed in that country, owes its origin to an invitation which I received from the American delegates at the Prison Congress of Paris, 1895, and which was renewed later in such fashion as to convince me that a great opportunity would be afforded of studying the details of the systems prevailing in the different States under the best and most favourable auspices.

The features of the system, which, if not peculiar to America, at least receive their highest development there, are the State Reformatory System, the Parole System, and the Probation System. It was with the view of making myself acquainted with the actual operation of these systems that I asked the permission of the Secretary of State to proceed to America, which was readily granted.

I propose to take these three subjects in the order named, and in an appendix to examine shortly the question of the comparative volume of crime in England and America and to give a short account of the Women's Reformatory at Sherborne, Massachusetts.

A few general observations will be necessary in the first instance. Crime in the United States, and its treatment, is not a matter of federal, or, as we should call it in England, of imperial concern. Each State has its own code of criminal law, made, altered, and repealed at the will of the State Legislature, and its own system of prison treatment. We find, therefore, the most striking diversities in the practice of the several States, not only in the legal definition of the various crimes, but in the penalties attaching to them, and in the treatment meted out to the offender. The Federal Government has no influence, direct or indirect, on the administration of justice, or in the treatment of crime, except in the cases of offences against the federal laws

regulating the coinage, the postal service, the revenue, &c. (There were 3,012 of these prisoners in custody in 1896; of these, 500 were confined in the United States Penitentiary at Fort Leavenworth, the one and only prison absolutely under the control of the Federal Government, the rest are scattered about in the prisons of the different States, and there they are kept without any special provision for subsequent inquiries or supervision by federal authority.) The Attorney-General of the United States in his last Report states that "the entire practice with regard to United States convicts is antiquated and inefficient," and strongly urges an improvement of the system.

The tenacious insistence on "State Rights" is perhaps an impassable barrier in the way of any form of centralization, or uniformity, either of law or of system, yet an Englishman cannot fail to be struck with the fact that the treatment of crime in America is a local and not a national concern; that there is no permanent judicial body carrying weight and authority and experience into the administration of the law; that there is no department exercising control over the lives of prisoners; that there is no fixity of tenure or security of office for the warders and other prison officials who are immediately and directly connected with the executive duties of prison management; that, as will be seen later, no attempt is made in a logical or comprehensive way to collect and tabulate judicial and criminal statistics; and thus, in a country remarkable for the intelligence of its statesmen, for its zeal for the liberty of the individual, for its profound patriotism, the one and principal index is wanting which would furnish a guide as to the moral and social progress of a community claiming to have discovered and to exercise the highest and best form of popular government.

It being clearly understood then, that the administration of justice and the punishment of crime is a local and not a national concern, it remains only to investigate the criminal law and the prison system of each individual State, in order to arrive at a just and intelligent appreciation of the penal system of the western world. It is obvious that, in order to do this fully and effectively and accurately, the study to which I have been able to devote a few weeks would demand for its fulfilment an equal number of years. I do not pretend therefore to give more than the general outline of the leading features of the system prevailing in those States which I have visited, and which were selected as the most representative and progressive, both in their legislation and in their management of prisons. These States were:—New York, Massachusetts, Illinois, Ohio, and Pennsylvania.

The general features of the system are common to all the States, viz.:—Petty offenders and prisoners awaiting trial are under the care and control of the local authority representing

the counties and the cities—persons convicted of serious crime are under the control of the State. The former are detained in Workhouses and Jails, the latter in State Prisons, and in some of the States in State Reformatories. The classification is roughly into persons guilty of felony and misdemeanour, but the latter *can* be punished with detention up to five years and the former *must* be punished with a minimum detention of one year. The system roughly corresponds with that prevailing in England prior to 1877, when the State had control only of the Convict Prisons, and the local Justices were responsible for the custody of local prisoners, with this difference, that here a local sentence could not exceed two years and a sentence to penal servitude could not be less than five years.

With regard to the Jails and Workhouses (though I visited three, at Boston, Chicago and Pittsburg) I did not pursue any detailed inquiry. The system of control and management is notoriously inadequate, and there is a consensus of opinion that their transfer to State control is urgently required, but as the State is tenacious of its rights as against the Federal Government, so is the local authority of its rights as against the Governor of the State. Similar difficulties existed in England prior to the transfer in 1877, and they are less likely to be overcome in America, where any disturbance of the *status quo* might have wide reaching political results, and where there is no solid public opinion to back up a reform which is called for in the interests of discipline and uniformity. Indeed, on the contrary there is a general distrust of "official" authority, which thoughtful people, themselves favourable to the establishment of a Civil Service on English lines, regard as fatal to any proposal having for its purpose the substitution of "official" for local control.

It is not, however, from any want of public exposition of the evils of the present system that reform is delayed. The following quotation from an official report to the Legislature of New York with regard to the local jail of the city called "The Tombs" will illustrate this. The Tombs is primarily a House of Detention for prisoners awaiting trial, and it is thus described:—"The Tombs Prison is a disgrace to New York. It is defective in every modern appliance. It is dark, damp, and ill-ventilated. The closets are a filthy nuisance. There are no facilities for bathing, exercise, employment, or religious instruction. Worst of all is the hideous system of keeping two or three men in a cell, which is nothing but a means of indescribable torture to a decent man, and a prolific school of vice and crime to a criminal. . . . Such treatment of dogs would be gross cruelty."

It must not be supposed that all jails are as bad as this, some indeed, I was informed, were models of cleanliness and order. Generally speaking, however, it is agreed that they are the dark

side of the American prison system, of which prison reformers are fully conscious, and which they are seeking to abolish.

Leaving these, therefore, out of our purview, for the typical features of the system we must examine those institutions which are under the direct control of the State, and where the newest and latest ideas of prison treatment find expression, *i.e.* the State Prisons and the State Reformatories. Lest the English parallel to which I have before referred should be misleading, it must here be stated that contrary to what is the case in England, the larger proportion of the criminal population is to be found in the State Prisons. Thus in 1890 out of a Prison population of about 82,000, no less than 46,000 were in the State Prisons. The reason of this is partly to be found in the Statutory compulsion to commit all felonies to State Prisons for terms exceeding a year, partly to the prevalence in America of the more serious forms of crime, homicide, burglary, &c., and partly also to the general tendency to inflict longer sentences than we are accustomed to in England. For this reason the State Prison System can be justly regarded as *the* Penal System of the United States. Its peculiar features, *viz.*, of Parole and Indeterminate Sentences will be returned to later. Apart from them its leading characteristics can be summarised as follows, so far as I was able to judge from an examination of the system at the following State Prisons :—Charlestown (Boston), Sing Sing (New York), Joliet (Illinois), Columbus (Ohio), Pittsburg (Pennsylvania).

(a.) There is no Progressive Stage System as in England, whereby a prisoner advances by stages or classes from the lowest to the highest, according to his industry and conduct, receiving as he advances, increased privileges in the way of letters, visits, and gratuity. There is a system of "Grades"—every convict on reception enters the second or intermediate grade and is liable, in the case of misconduct, to be degraded to the first or lowest, or is able by good conduct extending over six or twelve months to be raised to the third or highest. The distinction in some prisons is maintained by a variety of clothing, or perhaps of diet—in others the distinction is more nominal than real.

(b.) In spite of the Labour Laws these prisons are still for the most part vast factories, conducted under what is known as the "Public Account" System, or the "Piece Price" System. Under the former the State manufactures and sells in the open market in the same way as a private employer of labour. Under the latter, a contractor supplies the material and machinery and pays so much for the manufactured article. Machinery of the most expensive and modern kind is everywhere in use, and indeed to such an extent is trade pursued that at one prison—Columbus—the trade profits more than

paid for the whole cost of the institution, some 280,000 dollars or £56,000 a year.

- (c.) Discipline during the hours of labour is on the whole well maintained, though with what in England would be considered very inadequate supervision, but the Warders all carry fire-arms, the moral effect of which dispenses with a larger staff.
- (d.) After the day's work is over, about 4.30, the men are taken to their cells, and it is during the period intervening between this time and bed time, about 8.30, that the relaxations of discipline, of which so much is heard in England, take place. The cells are all lighted with electric light (at Pittsburg tallow candles are allowed in the cells); tobacco-chewing, and in many prisons, smoking is allowed, also the daily and weekly papers. As a rule a convict is allowed to furnish his cell with pictures, photographs, looking glasses, &c. The solid cell door used in England is not used except in the punishment cells, iron gratings taking their place, thus rendering communication easy and the arrangements for night patrol seemed to me to be inadequate, especially having regard to the fact that in most prisons, owing to the insufficient cell accommodation, what is known as "doubling up," or two in a cell, is a common practice.

I visited one large prison late in the evening and nothing could exceed the quiet and orderliness of the place, but at this prison a safety valve is found for the emotional energies of prisoners by permission being given between 6 and 7 to any convict to exercise himself on any musical instrument that he either knows or may be ambitious to learn. The discord that ensues, if ungrateful to the musical ear, is alleged to be instrumental towards securing a desire for repose when the bell for cease music is sounded, and certainly when I visited the prison at 10 p.m. you could hear a pin drop, though there were over 1,200 convicts in one long range of cells.

These and similar indulgencies are, of course, quite opposed to traditional English ideas of discipline and punishment; they are, however, adopted deliberately by conscientious, able, and experienced Wardens, not from weakness or as a concession to criminals whom they are unable to control, but as a means of discipline and a reasonable recreation at the close of a hard day's work. One is at first disposed to wonder that public opinion should tolerate indulgences to criminals which must so obviously tend to a weakening of the effect of punishment, and consequently of the power and majesty of the law. It is, in my opinion, to be accounted for by the fact that, as has been observed by competent and close observers of the American character, the public sentiment is notoriously tender towards criminals. As a

race Americans are genial, kindly, and indulgent, and so far as crime is concerned, the effect of a lax prison system, or the absence of an adequate attribution of the punishment to the crime is not so easily distinguished, so keenly felt, and so severely criticised, on a vast continent where the local life is merged in vast cities, and where local opinion is distracted by vast commercial and political speculations, as in a small country. This may seem a very abstract and philosophical explanation to offer for what I can only describe as the strange "vagaries" of the system, but I believe it to be substantially true.

At any rate it is well to think of this before a hasty criticism is directed against the American Penal System, offering as it does such remarkable contrasts to English ideas of justice and of punishment.

- (e.) The Warden, or Governor, has a large and practically uncontrolled discretion in the management of his prison, subject only to the control of a Board of Managers appointed by the Governor, and going in and out of office with every change of Government. Save with few rare exceptions the Warden himself is liable to removal on a change of office whatever his capacity, character and reputation may be. This intrusion of politics into the domain of prison administration is, of course, fatal to sound, steady, and continuous government. All agree in deploring it, but all see no prospect of placing their prisons on a non-political footing in the present temper of public feeling.

The system has this disadvantage also that the Warden being, in most cases, of the same political complexion as his Board of Supervision or Management, the independent criticism of an outside and non-political body is less likely to be exercised than if the freemasonry of common political ideas did not exist between supervisor and supervisee.

Such, generally speaking, are the distinctive features of American State Prisons from an English point of view. The administration differs in a thousand minor details to which it is not necessary to refer, my object only being to give a general impression of the more salient characteristics. It may be noted, in passing, that the Warden frames his own estimates for each year, and the Legislature is liberal in making the necessary "appropriations" as they are called. The facility with which large appropriations are secured for such expensive items as the installation of electric light, new buildings, &c., is one of the remarkable features of the system, and is to be accounted for by the large profits hitherto accruing to the State Exchequer from the sale of prison labour, in consideration of which the State seemed to me generous even to extravagance in some cases.

A curious system prevails at Sing Sing, whereby the proceeds

from prison labour are not paid as they accrue to the Treasury, but are banked by the Warden. A new and elaborate Hospital has just been completed at this prison at a cost of about £30,000, and the Warden, in his Report, claims credit for the fact that "this money was not drawn from the Treasury of the State but "from the earnings of prison industries." I think that the Chancellor of the Exchequer might have something to say to such an operation if applied to the prison buildings of England.

Before leaving the subject of State Prisons, it is worthy of note that the structure of these prisons differs greatly from the methods of architecture usual in England. The gloomy features of English prison buildings are avoided. One of the most typical of the State Prisons is that at Pittsburg, a long building with large airy windows all along the front—the cells, instead of facing each other with the corridor intervening, all face outward and thus gain the advantage of light and air afforded by the large external windows. A narrow corridor runs between the rows of cells, thus preventing contiguity at the back, and furnishing means for drainage and ventilation, each cell being provided with a closet, a basin and water supply. The purity of the air and the cleanliness of the prisons were admirable, and under a very elaborate system of warming by hot air, a regular and uniform temperature is sustained throughout the year, which, considering the varying nature of the climate from extreme heat to cold many points below zero, is a considerable engineering triumph.

STATE REFORMATORIES.

We now approach a subject which has been, and still is, fruitful of keen interest and discussion both in England and America; and in the former country, at least, of not a little misunderstanding. The methods of the State Reformatory System, of which Concord (Massachusetts) and Elmira (New York) may be taken as the most typical (and both of which I visited, staying as the guest of the Warden at the latter, the celebrated Mr. Brockway) are, I believe, peculiar to America, and their institution and meaning cannot fail to be of extreme interest to all persons engaged in the great contest with crime, either as Judges, or Statesmen, or Prison Officials, or students of sociological problems. I will endeavour shortly to describe the meaning, value, and results of this system.

1. Its meaning :—

It is an attempt made at a considerable cost, and by the most ingeniously contrived methods, to deal with the problem of "*juvenile—adult criminality*" by other than ordinary punitive or *prison* methods. It may require a considerable effort to

throw oneself into the mental attitude of so many Americans, who are prepared to reject in the ease of a certain class of offenders the doctrine of the "right to punish." One cannot fail to be struck by the relation existing between the ideas of a large school of American penologists and the social doctrines of the French revolutionary period, which we know historically have had a deep influence on American opinion. The particular doctrine is found in the phrase—*la société prepare le crime—le coupable n'est que l'instrument qui l'exécute*. In the light of this doctrine it is held that a youthful offender, or rather a juvenile adult (the age is 15 to 30 at Elmira, 15 to 35 at Concord), however serious his crime, is more sinned against than sinning. His crime is due to inherited defect, mental or physical—to vicious environment—to his not having had a chance. The duty of the State, having got this man into its clutches, is not to *punish* him, *i.e.* by cellular immuration for a definite period, and at the end of that time to let him loose upon society, probably no better than he was before, but to *regenerate* him, physically and mentally, to fit him to take his place amongst honest citizens, to prevent him from drifting into the ranks of habitual crime.

That I have not exaggerated the prevailing sentiment with regard to the function of punishment for the younger class of criminals, will, I think, be shown by the following extract from a presidential address given on the occasion of the annual meeting of a leading scientific association of New York. The President stated:—"Measuring the punishment to the crime is in the spirit of vengeance, which does not belong to man. It breathes no thought of reformation or of the intelligent protection of Society." If we add to this sentiment, finding, as it does, expression in high places, the characteristic indulgence towards criminals to which Mr. Bryce refers as a "view odd in a people, whose ancestors were penetrated with a belief in original sin;" and if we add again the characteristic hopefulness which the same author predicates as especially distinguishing the mental habits of the race, I believe that we shall have found, at least, a plausible explanation of the so-called "State Reformatory Movement," which allows adults up to 30 or 35 guilty of serious crime to be placed in institutions where they are known as "inmates" and not as "prisoners"—where the most detailed attention is given to their physical, intellectual, and industrial training—where no sentence as a punishment for the specific offence is named in the commitment—but where criminals having "graduated" through certain stages of instruction in such a way as to justify, in the opinion of the management, a presumptive inference that a criminal will go and sin no more but become a useful citizen of the State, is released on parole after a detention which need not exceed 12 months, irrespective of the nature of his offence or of the minimum or maximum prescribed by law for its punishment.

That in many cases the crime is of a serious nature, such as

would in England entail probably a long sentence of imprisonment, is shown by a list of the offences committed by the inmates received at Concord during the past year (799 in all). There were 33 assaults, 9 robberies, 1 manslaughter, 1 attempt to murder, 163 breaking and entering, 13 embezzlement, 6 forgeries, 9 frauds, 253 larcenies, and 13 receiving of stolen goods—a truly formidable list of crime, evidencing a large reserve of faith and hope on the part of the public opinion of the country, which is willing to forego the ordinary satisfaction for these offences in consideration of the prospect, that, by the use of reformatory methods, their perpetrators can be rehabilitated into honest citizenship. The methods of “reform” employed at Concord and Elmira—though differing in detail—are in principle the same. They are, shortly, physical development, by gymnastic and military exercise—intellectual training, *i.e.*, from the Grammar School of the illiterates to advanced lectures on political, ethical, and economic subjects—manual training, from the elementary Sloyd process to advanced technological study, *e.g.*, engraving, etching, carving—industrial training in the ordinary outside trades, masonry, carpentering, &c.

The classification is by a system of grades kept with mathematical exactness, showing the advance or relapse of each inmate in each department of letters, art, industry, and general conduct. The inmate is first put into an intermediate or probationary grade for six months. For bad conduct he may be at any time reduced to the lowest grade. After good conduct for six consecutive months he is advanced to the highest grade. The basis of the whole system is the “indeterminate” sentences, by which parole can be earned in 12 months, but the average time for parole is about 22 months. No inmate is paroled until he has a situation provided for him and from that time he is under surveillance for six months, during which time he may be at any time returned to the Reformatory for breach of parole.

It is a mistake to suppose that the discipline is lax, or that these places are “hotels” where the prisoners go to enjoy themselves and have an easy time. The contrary is nearer the truth. At both institutions it is a common thing for the inmates to express a preference for the State Prison. At Elmira a few years ago a strong protest was made in the Press against the severity of the discipline administered there. A Commission of Inquiry was appointed consisting of three persons, an ex-justice of the Supreme Court, a leading physiologist, and a well-known lawyer. The first mentioned did not concur in the finding of the other two, which was accepted by the Government, and which was to the effect that as “organised and conducted it was a “model Reformatory, and that its results have been extraordinary “as regards its success in the reformation of criminals.” Mr. Brockway, the Superintendent, in his last Report, says “the more “of indulgence, the less of useful effort by the prisoner. Sen-

“timentalism in a Reformatory is what dry rot is to the beams of a building. Our interest in, and sympathy with, young criminals should not exceed our sympathy for their innocent victims.”

Mr. Scott, the Superintendent of the Concord Reformatory, in his last Report, also lays stress on the necessity of a firm and exact discipline, to compel obedience to rules, and to fortify the self control of a delinquent.

A distinctive trait of the Elmira Reformatory is its reliance on the so called “physical method” as an instrument of reform. The principle of it is that physical degeneracy lies at the bottom of the criminal character. I saw a batch of inmates at Elmira going through a course of Turkish baths, fitted in a most costly and elaborate manner. Thence they are taken to a shower bath and given a cold douche, and then put through a course of gymnastic exercise, the purpose being to repair and fit the organism for its normal and healthful functions, increasing the amount of nervous energy, and by this means strengthening character. The military organisation is also highly elaborate—the whole population is divided into 16 military companies, constituting 4 battalions, and a regiment, the object being to inculcate manliness of bearing and movement and feeling, incident to good military training. The movements were perfectly executed and I do not hesitate to say that a battalion of Guards might envy the precision of the manual drill.

THE RESULTS OF THE SYSTEM.

The most reliable statement of this is to be found in the Report of Commission of Inquiry into the discipline of Elmira to which I have before alluded. It is as follows:—“The statements published by the Managers from time to time relative to the ratio of *probable* reformations of paroled men indicate upon their face that such statements are only estimates of probable results. The Managers estimate that probably 81·9 per cent. of convicts paroled prior to September 30th, 1893, have been reformed. That result is arrived at by comparing the total number of men paroled prior to that date (3,725) with the estimated number reformed (3,051). Compared with the whole number discharged during the same period (4,797) by parole or expiration, the ratio of probable reformation would be 63·6 per cent. In the years 1887–8 an effort was made to verify the estimates of probable reformation as to the 1,722 prisoners who had been paroled prior to 30th September, 1887. Inquiries were sent to every prison where they might possibly be or have been imprisoned, and to relations, employers, &c. Definite information was received as to 1,125. Of that number 78·5 per cent. had not fallen into crime.”

THE VALUE OF THE SYSTEM.

In estimating the value of an institution by these results, it

is necessary to bear in mind two things: (1) that the majority of inmates are first offenders, or persons whose characters, antecedents and positions are such as to justify the Judge in believing that there is a fair presumptive reason to suppose that the offender does not belong to the criminal class, and so is a proper subject for reformatory treatment. Otherwise the ends of justice would not be satisfied except by his committal to an ordinary penal establishment. The percentage of relapses among a material aggregated in such fashion would not ordinarily be large. Instance the "Star Class" in English Convict Prisons where the number of relapses is estimated to be extremely small, though the method of treatment is the ordinary prison treatment.

(2) Apart from the special inquiry of 1887, where active steps were taken to "follow up" cases, the ordinary computation of the number of reforms is based only on the conduct of paroled men *during their term of surveillance*—6 or 12 months. This basis must be in the nature of things very inadequate and misleading. It is not surprising that a man for whom good employment is found, and with a sum of dollars in his pocket, should keep straight at least until that period had elapsed during which it was imperative upon him to report to the authorities, and failing which report he was liable to be arrested and taken back to the reformatory. I do not therefore lay much stress on these figures of probable reforms, but I lay great stress on the general character and object of these institutions, as evidencing an effort deliberately made, ingeniously contrived, and systematically executed, to deal with the great criminal problem of adult-juvenile criminality. They are not the invention of careless or negligent or foolish men, but perhaps of the most thoughtful and intellectual men in the community, who for certain offenders are prepared to reject the old systems of imprisonment and penal servitude, not from a desire to minimise the penalties of crime or to weaken the authority of the law, but because they are convinced that the interests of the commonwealth are better served by adopting methods whereby the potential good of an offender may be evoked and converted to the benefit of the State, than by his punishment by the usual methods of incarceration under definite sentences. These men therefore must be argued with before they can be condemned as tampering with crime and indulging criminals, and thus bringing the law into ridicule.

There is much in the system that is extravagant and to English ideas nearly approaching the ridiculous; the fundamental principle however is one that must commend itself to the consideration of all thoughtful people who are interested in the study of criminal problems, viz., that up to a certain age every criminal is potentially a good citizen; that his lapse is presumably due either to physical degeneracy or bad social environment; that it is the duty of the State, at least, to try and effect a cure, and not

to class the offender offhand and without experiment with the adult professional criminal. The recent Committee on English Prisons say :—

“ We are of opinion that the experiment of establishing a penal reformatory under Government management should be tried. It should be begun on a moderate scale, but on a design which would allow of large expansion if the results were proved to be satisfactory. The Court should have power to commit to these establishments offenders under the age of 23, for periods of not less than one year and up to three years, with a system of licenses graduated according to sentence, which should be freely exercised. In the event of any inmate of a reformatory being contumacious and beyond the power of the managers to control, power should be given to a court of summary jurisdiction, on cause being shown by the managers, to transfer him or her to a penal reformatory for a period not exceeding the unexpired portion of the term which was to be served in the reformatory. And power should also be vested with the Secretary of State similarly to transfer prisoners under 23 from prisons to the penal reformatory, if satisfied that the treatment there would be more suitable to the particular case.”

“ We look upon this plan, in conjunction with the raising of the age for admission to reformatories, as the best proposal that is open to us for the rescue of young offenders. Under the present system numbers of them come out of prison in a condition as bad or worse than that in which they came. They go out with the prison taint on them. The available prison staff and the rigid system of prison discipline, without any fault on the part of the officials, preclude the possibility of bringing to bear on the prison population the moral suasion and the healthy practical advice which we think could be exercised by a trained and selected staff in the penal reformatory. The inmates upon discharge would be provided for and looked after much as in the case of the lads and girls who leave reformatories, and if they relapsed into crime it would be of their own deliberate choice, in spite of every effort to save them, and they would subsequently be exposed to the far sterner penalties of prison life.”

The recent inquiry into the Reformatory System, which followed closely on that into the Prison System, practically endorsed the finding of the latter body, that the number of criminals of 16-21 was very great and was increasing : that something must be done to meet the case of those offenders who were too old for Reformatories and too young for Prison.

It is curious that the ideas which lie at the bottom of the American System, should so recently have found expression in the reports of the two important committees to which I have referred. There can be no doubt that there is a very strong

and influential body of public opinion in favour of a differential treatment of young and first offenders as an alternative to ordinary prison methods. The Americans, of course, have carried the principle to an extravagant degree, but without necessarily imitating their methods, we are bound to give them credit for a bold experiment in proceeding in a new direction, and it is not impossible, in the light of the reports above quoted, that public opinion in England would encourage an experiment having for its object the treatment of juvenile-adult offenders between 16-21 on lines specially directed to their physical and moral reform. The essential basis of such a system lies in the "indeterminate" sentence. Any experiment in this direction must necessarily be accompanied by an alteration of the present law giving power of committal to the State Reformatory for indefinite periods.

I have compiled the following table in order to show, in dollars, the comparative cost of State Prisons and State Reformatories :—

STATE REFORMATORIES.

	Number of Inmates.	Labour earnings.	Total cost.	Net cost.
Concord ...	933	25,798	196,752	170,951 or per head 183 $\frac{1}{4}$.
Elmira ...	1,354	32,281	212,556	180,275 or per head 133 $\frac{1}{7}$.

STATE PRISONS.

Sing Sing ...	1,329	56,281	150,814	94,533 or per head 71.
Joliet ...	1,419	176,666	205,972	29,306 or per head 20 $\frac{3}{4}$.
Columbus ...	2,174	230,947	288,807	57,860 or per head 26 $\frac{3}{4}$.

The small cost of Joliet or Columbus is due to the fact that the labour legislation is less stringent than in New York and Massachusetts, and to the fact also that the labour of the reformatories is directed more to non-productive technical instruction than to the production of goods for sale.

THE PAROLE LAW AND INDETERMINATE SENTENCES AS APPLIED TO CONVICTS IN STATE PRISONS.

The right of pardon, corresponding to the exercise of the

prerogative of mercy, has always been inherent in the Governor of the State. There has also been a "good time" system corresponding to the English ticket-of-leave system, being a month for the first year, two months for the second, and so on of sentence. This is equal to one-fourth of a five years' sentence and one-third of a ten years'. Of recent years the Legislatures of several States, notably Ohio, Illinois, and Massachusetts, have introduced in addition the Parole system based on the indeterminate sentence. This indeterminate sentence is of two kinds (*a*) where the Judge fixes the minimum and maximum, (*b*) where no definite sentence is stated in the commitment, it being provided only that the convict must serve the minimum prescribed by Statute for the offence of which he is found guilty. This latter operates in Illinois. The former is the more general system. It is clearly explained in the New York law, though curiously in this State the Courts rarely exercise the power, very few cases having been so dealt with since the law passed in 1890. The Statute runs thus: "Whenever any male person over 16 years of age shall be convicted of a felony which is punishable by imprisonment in a State Prison, the Court, instead of pronouncing a *definite* sentence of imprisonment, may pronounce an indeterminate sentence *with the minimum and maximum only specified*, but the minimum and maximum shall not be less or greater than that prescribed by Statute for the offence." The Parole Board consists of the Superintendent of State Prisons, the Warden, Chaplain, Physician. Parole may take place when there is "reasonable possibility that the prisoner will live and remain at liberty without violating the law."

In Illinois no sentence at all is specified, the statutory minimum being the term prior to which parole cannot take place.

In Massachusetts the minimum and maximum law as in New York is prescribed, but has not yet been long enough in operation for its results to be known.

Ohio claims a great success for the operation of the system. During 1896 out of 1,260 discharged, only 80 were paroled, which seems to show that the power is not carelessly exercised, seeing that there is power to parole as soon as the statutory minimum of the sentence is fulfilled, and it is stated that on an average paroled prisoners serve more than half their sentences. The power of parole is here, as in other States, vested in a Board of Managers, who hold regular meetings for parole hearings, and are, of course, guided by the advice and recommendation of the Warden.

The form of parole is as follows:—

"The Board of Managers desiring to test the ability of
 ".....a prisoner to refrain from crime and lead an
 "honourable life, do hereby parole the said
 "and allow him to go on parole outside the buildings and
 "enclosures of the prison but *not outside the State* subject to the

“ following conditions.” These are to the effect that he shall proceed at once to the place of employment found for him ; he shall report on the 1st of each month to the Secretary of the Board ; he shall avoid bad company and abstain from intoxicating liquor ; he shall be liable to re-arrest at any time before the expiration of his sentence.

From 1895 to 1897, 1,172 prisoners have been paroled. Out of that number there have been 198 revocations ; 108 have returned to prison ; 90 have avoided arrest.

The Board of Parole is in all cases appointed by the Governor of the State. In Ohio it is composed of five members, three of whom belong to the majority party and two to the minority, with the object of securing an impartial and non-political consideration of each case.

With regard to the system generally, the fact that a body of irresponsible citizens should have the power *proprio motu* to discharge from prison, possibly after some twelve months' imprisonment, any criminal who shall appear to them to be not likely again to violate the law is obviously in striking contradiction to the principles that have hitherto, at least in Europe, regulated the punishment of crime. It violates the fundamental principle that punishment to be effective shall be certain and definite : that the sentence of the court shall be the final arbitrament of the case ; and that the prerogative of mercy is the essential attribute of sovereignty alone. The absence of all reverence for these three time-honoured and very English principles is very remarkable in a race into the blood of which they should, if there is anything in heredity, have most profoundly permeated. I believe that the reason of it is to be found partly in the want of respect for, and confidence in, the State's Judiciary, and partly in that feeling of indulgence for criminals which is so marked in America.

With regard to the Judiciary, Mr. Bryce says, “ the English form their conception of the Judge as a person necessarily and naturally dignified and upright. Having formed it they carry it abroad with them and are astonished when they find it does not hold in other countries.” Having carried this conception abroad with me, and, with it, the ordinary English ideas as to the sacredness of the prerogative of mercy (the dignity and importance of the latter being a necessary corollary of the former conception) I could not fail to be surprised at the absence of that full confidence in the integrity and ability of the Judge with which we are so familiar. But, in the absence of that confidence, it is hardly to be expected that public opinion will be generally found to support the judgment of the Judge, especially having regard to the fact that the criminal judges are elective officers, appointed for a few years, and, therefore, of course, not carrying the weight and dignity which is essential to command public confidence. So it is that we find in effect

that the verdict of Judge and Jury is set aside, and subordinated to Prison Regulations under which a man is given a right to parole when he shall have passed through certain grades and can in the opinion of the Prison Authority be discharged with safety.

In principle, then, the "parole" system must be condemned. There must be a tendency to flirt with crime if the decision of the Court can be set aside by a body of men, however competent, impartial and able, who rely merely on the "observation" of a prisoner while in prison, and upon that decide that A is a good man and can be safely discharged, B is a bad man and must be kept in custody. This uncertainty must have also the bad disciplinary effect of unsettling the prisoner himself, and must be a fertile source of discontent, and though the system is alleged to afford a great stimulus to good conduct and industry, the right to earn "good time" on a liberal scale ought to, and in fact does, if properly administered, sufficiently meet this end.

Another valid objection to the Parole Law as administered by Boards of Elective Managers is that political pressure by interested parties may be brought to bear in favour of particular prisoners. I do not say that this is done. On the contrary, as far as I could gather, the duties of parole were discharged with a full sense of responsibility: but it is an obvious danger and no system can be good which admits of this element of danger. In Ohio, it is guarded against by the provision that political parties are divided on the Board, and in order that the public conscience may not be violated by a premature release of any criminal it is necessary to advertise any proposed parole in the local press. These safeguards are evidence that the danger to which I have referred is not an imaginary one. Again, the contiguity of the different States affords easy means for a paroled man to escape from the jurisdiction which holds him, and though facilities exist for his re-arrest in a neighbouring State, I observed a disposition to regard the flight of an obnoxious criminal across the border as a not unmixed evil. However, in this connection, I may state that the Bertillon system of identification is being energetically developed both by the prison and the police authorities of the several States, and greater opportunities will exist than heretofore for the recapture of escaped criminals. I was impressed with the zeal and energy with which the Bertillon system was being pushed forward in America, and mainly by the initiative of individual Wardens of prisons. These have formed themselves into an association and have enlisted the services of the celebrated Pinkerton Agency of detectives. It is proposed to establish a central bureau at Chicago for general reference while each prison takes and keeps its own anthropometrical measurements. The system will only be applied to the State Prisons but, as these contain the mass of criminals, it is not unlikely that before long there will be a very effective

system of anthropometry in operation throughout the United States. It is now in practical operation in Illinois, Michigan, and Wisconsin, and more recently has been legalized in Massachusetts.

It would not be fair to discuss the subject of "indeterminate" sentencees, the objections to which must be, I think, so obvious, without referring to the arguments which prevail in America on the subject and which seem increasingly to convince public opinion that they constitute the proper and reasonable method for dealing with crime. The idea, no doubt, springs from the alleged success of the "indeterminate" principle as a *reforming* agency, *i.e.* in its application to the inmates received into the State Reformatories, *i.e.* the juvenile-adults 15-35, for the most part first offenders, not previously convicted of felony. The experience derived from these institutions led to the opinion that there could be no real prospect of reform for criminals of *any age* unless this basic principle was applied *passim*. The following extract from a paper read before the Prison Congress of the United States in 1895 will illustrate this. "The community cannot afford to take the chance that a prisoner will come out a good citizen, *as a result of mere confinement*, when it can reduce the risk by applying the means which it has found effective in Reformatories. There is every reason to believe that they can be applied with good results . . . the definite sentence is based upon an erroneous theory—it assumes that a Judge can tell how much punishment shall be imposed justly, as a penalty for an offence . . ." Penologists who thus deery the traditional methods of punishment will not be accused of want of courage, but the alternative theory that the Warden of a prison can fix with accuracy the psychological moment in a criminal's career when he may be set at liberty with safety to society is not less erroneous and certainly more dangerous, for it is undoubtedly better in the interests of society that a criminal should be detained too long under a definite sentence than that he should be let out too soon under an indeterminate sentence. While, therefore, justice must be done to the humane intentions of those who are in favour of applying the "indeterminate" principle to the sentences of adult convicts or penitentiary prisoners on the ground that the chance of reform under the stimulus of that principle will justify its application,—opposed though it may be to all traditional ideas of punishment—yet I think they cannot be absolved from a dangerous disregard of the elementary purpose of punishment, *viz.:*—to *deter* as well as to reform. In their hurry to release a man because it seems to them from a diagnosis of his character that he may be good in the future, they forget that the man owes a debt to society because he has been proved by the law to have been bad in the past.

It is of course clear from what has been said before that the same objections do not apply to the "indeterminate" sentences as

applied to the State Reformatories, *i.e.* to First Offenders and Juvenile-Adults. On the contrary it is the essential basis of any differential treatment of this class of offender for these reasons that, firstly, it gives *time* which is essential to the operation of reforming agencies and, secondly, it is a potent stimulus to the young and non-habitual offender to comply with the conditions of his probation, which to be effective must be onerous and trying to the physical and mental energies.

THE PROBATION SYSTEM.

In England there is power to release certain offenders "under recognizances upon probation of good conduct . . . if it appear that reformation may be brought about without imprisonment," but while the principle of probation as an alternative to imprisonment is thus recognized there is no effective provision for a *system* of probation by the appointment of officers, whose duty should be, as in Massachusetts, both to inquire into the character and antecedents of prisoners *before trial* and to report to the Judge, and *after trial* to take charge of persons whom the Judge shall place on probation and commit to their care. This is the distinctive feature of the Massachusetts system. The law compels the appointment by the Court of salaried Probation Officers, who have all the powers of Police Officers. Their duty under the law of 1891 is to "inquire into the nature of every criminal case brought before the Court, and to recommend that any person convicted be placed on probation."

The accompanying statement of the methods employed in carrying out his duties was prepared for me by Mr. Keefe, the Chief Probate Officer. I also had an interview with Chief Justice Parmenter, the presiding Judge of the Boston Courts, who fully confirmed what Mr. Keefe says as to the success of the system.

"Previous to the year 1878 and for several years a benevolent old gentleman, Father Cook, waited upon the Court daily and interested himself in those unfortunates who in a moment of weakness were led to commit crime in some form, and who were in need of a friend to say a kind word to them. By his interceding in their behalf a great many persons were placed in his charge, and were saved from becoming habitual criminals. The good resulting from this kind of work becoming apparent to the Court in 1878, the Court appointed ex-Chief of Police, Edward H. Savage, as Probation Officer for the City of Boston, whose duty was to attend every session of the Municipal Court and take on probation those persons to whom the Court thought leniency be shown. This office was held by him until his death—1892.

"In 1891 Hon. William E. Russell, then Governor of

“ Massachusetts, in his inaugural address, recommended that the
 “ Probation System be adopted in the Courts throughout the
 “ Commonwealth.

“ The Legislature approved the recommendation of the
 “ Governor, and, May 28th 1891, an Act appointing Probation
 “ Officers through the State became a law, Chapter 356, Acts
 “ and Resolves 1891.

“ In the Central Court at Boston, six assistants (one a woman)
 “ were appointed to assist the Chief Probation Officer, the city
 “ being divided into districts, each assistant being assigned a
 “ district, their duty being to visit weekly each person in their
 “ charge and report once a month to the Chief Probation Officer,
 “ in writing, the conduct of each probater.

“ All arrests for the 24 hours ending at 7 o'clock, a.m., are
 “ transferred to the City prison.

“ The probation officer visits the prison daily at 7 o'clock, a.m.,
 “ talks with each prisoner, ascertaining the facts of his connection
 “ with the offence charged, his address, his former record (if any)
 “ and any information of benefit to the prisoner, keeping in mind
 “ the good of the Commonwealth.

“ The records of drunkenness are looked over, former arrests
 “ recorded and given to the presiding Judge for reference when
 “ the prisoner is called.

“ The assistant probation officers (in the cases of drunkenness)
 “ visit the homes each morning, reporting to the Judge, when the
 “ prisoner is called, facts ascertained at the homes. If the
 “ prisoner provides for his family and has steady work, although
 “ addicted to drink, having been previously arrested, the fact that
 “ the family are dependent upon him for support is taken into
 “ consideration by the Judge, and the prisoner is usually placed
 “ on probation. The probation officer, by weekly visits to the
 “ home, is able to report intelligently his conduct during pro-
 “ bation.

“ If the probationer persists in drinking, he is arrested by the
 “ probation officer and surrendered to the Court and sentenced.

“ If the person arrested is found to abuse or neglect his family,
 “ although his first arrest, he is sentenced. When the person
 “ arrested lives in another town, and his statements to the Court
 “ are doubtful, the case is continued long enough to write to the
 “ probation officer of the city or town for information. The
 “ probation officer through daily intercourse with the prisoners
 “ becomes familiar with the faces, and few old offenders pass
 “ through the Court without being recognised, although giving
 “ different names and addresses.

“ The probation officers are appointed by the Court, their
 “ duties in the Court on investigations being of such a nature
 “ that they must be exempt from political influence and wholly
 “ unbiassed.

“ In many cases the Judge cannot get at the true facts when the case is presented to the Court and depends upon the probation officer's investigation in deciding the case.

“ Applications for pardon of persons under sentence are referred to the probation officer, who is conversant with all cases of sentence through investigations at time of the arrest.

“ If on probation for drunkenness, it is imperative that the person shall abstain from all intoxicating drink ; if for embezzlement or larceny, restitution to be made, if possible ; if for non-support, the wife shall report with the husband to the probation officer. The term of probation is usually two months, the probationer reporting in person once each month. If the report is unsatisfactory to the probation officer, the persons not complying with the terms of their probation, they are surrendered to the Court and sentenced.

“ In the Superior Court persons are placed on probation for one year, they reporting in person once each month.

“ The good results of probation are apparent each month in the improved conditions in looks and demeanour of each person reporting to the Court, a very small per cent. being surrendered. In some cases, where restraint is necessary, a longer time of probation is made. The per cent. of persons defaulted is very small, most of these being persons finding employment in other places or gone to sea.

“ Probation has been very successful in Massachusetts, a great many persons being saved from imprisonment which would necessitate an expense to the county, not only for the care of the prisoner, but in many cases the family are thrown upon the city or town to be supported by charity until the release of the prisoner. In many cases the family ask the probation officer to extend the term of probation for a longer period as the restraint of probation has the desired effect. Many a wife and mother have expressed their heartfelt thanks that there is a law which can keep a family united, allowing the husband and father to provide for them, when, if he were sent to prison, want and privation would be upon them.

“ The probation officer makes a monthly report to the Prison Commissioners, giving the number of probation cases, the different offenders with which they are charged, and the amount saved the county for care of persons had they been sentenced.

“ The probation law has been in practical force for several years, and its benefits have become an assured success.”

A Public Commission, which inquired into the system in 1893, has reported that “ it has worked with admirable results, and as a means of dealing with certain cases of offenders has succeeded beyond a question.”

The following figures will show the extent of the operation of the law at Boston. During the year, 19,710 cases were referred to the probation officers. Of this number 11,326 were cases of drunkenness. The total number placed on probation was 1,820. Of these 325 defaulted and 203 surrendered to their sentence, leaving about 1,300 favourably disposed of.

Having been present in Court while cases were being dealt with, and having conversed with various authorities, I came to the following conclusions with regard to the system. (1) It is no doubt of great advantage to the Judge to be placed in possession of facts concerning each individual case, which enable him, in many cases, to dispense with the necessity of imprisonment. (2) The tutelage exercised by the officers during probation is salutary and beneficial, and calculated to check at its outset a criminal career.

Contra (1) it is doubtful if public opinion in England would tolerate the preliminary "inquisition" before trial, statements made by the prisoner being used by the officer in Court for or against him as the case may be. (2) It is difficult to avoid rivalry and conflict between the police and probation officer, the functions of the latter being to a great extent police duties. (3) Owing to the strong feeling in the State against any breach of the liquor law, and to the enormous number of arrests under it, being three-fourths of the total arrests, the time of the officers is practically absorbed by investigations into cases of simple drunkenness—cases which would not come into Court at all in England. Thus the original intention of the system, viz. :—that all criminal cases should be the subject of preliminary examination is largely departed from, and the probation officer runs a risk of becoming a mere instrument in the hands of that section of the community which pursues with relentless severity anyone succumbing to the temptation of alcoholic excess. (4) The system is expensive and might become inquisitorial.

APPENDIX A.

CRIME IN AMERICA AND ENGLAND.

The questions I propose to examine are the three following :—

1. Has crime increased in America in recent years ?
2. Is the volume of crime greater in America in proportion to population than in England ?

Owing to the want in America of accurate statistics prior to 1880, and subsequent to 1890, we can only compare these years, and that not in a very satisfactory manner, as we neither know the number of offences committed, nor the number of persons convicted, but only the number in the various prisons at a certain date.

These were, in round numbers, as follows :—

—	1880.	1890.
Population	50,155,000	62,500,000
Total in all Prisons	58,600	82,300
Rates to 100,000 of popu- } lation }	116·8	131·6
	1 in 855 of the population.	1 in 759 of the population.

These prisoners may be divided into two classes :—

- (1.) Those in State Prisons and Penitentiaries, which correspond more or less to the English Convict Prisons, and
- (2.) Those in County Jails, Workhouses and minor Prisons, which answer to our Local Prisons.

The numbers confined in these two classes of prisons were as follows :—

—	1880.	1890.
No. 1—State	35,950	46,000
No. 2—Local	22,650	36,300
Ratio to 100,000 of population		
No. 1—State	71·6 or 1 in every 1,395 of the population.	73·6 or 1 in every 1,358 of the population.
No. 2—Local	45·1 or 1 in every 2,214 of the population.	58·0 or 1 in every 1,721 of the population.

This shows an increase of all prisoners in ratio to each 100,000 of population from 116·8 in 1880 to 131·6 in 1890, an increase of ratio of 14·8, and of the two classes of prisoners :—

—	1880.		1890.
State	71·6	to	73·6
Local	45·1	to	58·0

an increase in ratio of 2·0 in State, and 12·9 in local prisoners.

The increase is more easily understood from the following table :—

—	1880.	1890.
State	1 in 1,395	1 in 1,358
Local	1 „ 2,214	1 „ 1,721
All prisoners	1 „ 855	1 „ 759

which shows a very slight increase in serious crime and a considerable increase in petty crime in the ten years 1880–90.

The increase in the number of prisoners charged with homicide is as follows :—

—					Number.	Ratio to 100,000 of population.
1880	...	...	...	...	4,608	9·1
1890	...	...	...	...	7,351	11·7
						Increase 2·6

2. With regard to the question as to the relative amount of crime in the two countries it is difficult to compare them, as the figures do not refer to the same years, but the latest reliable figures give us the following information in round numbers :—

					ENGLAND.	AMERICA.
Population	...	...	...	...	30,000,000	62,500,000
No. in all prisons	...	...	...	...	17,000 or 1 in every 1,764.	82,300 or 1 in every 759.
No. in Convict Prisons	...	...	...	...	3,000 or 1 in 10,000.	46,000 or 1 in 1,358.
No. in Local Prisons	...	...	...	...	14,000 or 1 in 2,143.	36,300 or 1 in 1,721.

The prevalence of crime in America is often attributed to the foreign immigrants, and Dr. Wines states that the ratio of native prisoners to the native population is 1,233 to the million, while the ratio of foreign prisoners to the foreign population is 1,788 to the million, but this comparison is most misleading, because the young children in the community practically furnish no prisoners, and nearly all these children are native born, even where their parents are foreign immigrants.

Of the prisoners in the United States

98·5 per cent. are above the age of 16
 95 " " " 18
 84 " " " 21
 The native born population is 53,300,000
 " " prisoners 65,977
 ratio 1,237 to the million,
 Foreign born population, 9,200,000
 " " prisoners 16,352
 ratio 1,777 to the million,

but the number of native born males of voting age was 12,591,852
 " " " prisoners " " 61,637
 ratio 4,895 to the million,

and the number of foreign born males of voting age was 4,348,459
 " " " prisoners " " 14,287
 ratio 3,285 to the million,

showing an actual excess on ratio of native over foreign born of 50 per cent.

In this comparison the female population is omitted, as the census does not give the nationality of women, but only 9 per cent. of the prisoners are women.

APPENDIX B.

THE STATE REFORMATORY FOR WOMEN AT SHERBORNE, MASSACHUSETTS.

This is a most remarkable and unique institution, to which no parallel exists in this country, being for women with sentences of more than a year, who in the opinion of the Court are fit subjects for reformatory treatment. The majority of the inmates were convicted of drunkenness, an offence which the law of Massachusetts visits with Draconian severity—a sentence of two years being very common. This at once differentiates the class of women from that in ordinary penal establishments. At the same time we find that other women guilty of serious crime are sent by the Courts to this prison with a view to their reform. Thus, while of 352 inmates, no less than 200 were convicted of drunkenness, there were also 63 cases of offences against chastity, 30 of larceny. The average age was 31, and the average duration of sentence just over a year. In appearance and in character it more resembles a hospital or home for inebriates than a State Convict Prison. Mrs. Johnson, the Superintendent, is one of the most striking personalities in the United States, and her influence over depraved women is very remarkable. She relies on a system of grades or divisions as a stimulus to reform. The difference in grades is denoted by small and scarcely perceptible variations of the little details of everyday life, such as are supposed in a peculiar degree to effect the appreciation of women—*e.g.*, in the lowest division the women have their meals off old and chipped china; in the next the china is less chipped; in the highest there is no chipped china—

the table is elegantly set out with tumblers, cruet-stands and a pepper-pot to each prisoner. Mrs. Johnson assured me that this appealed with special force to their vanity. The Superintendent relies greatly also on the moralizing influence of animals and birds. Well-behaved convicts are allowed to tend sheep, calves, pigs, chickens, canaries, and parrots. This privilege is highly esteemed, and productive, it is said, of the most softening influences. The whole establishment is a model of order, discipline and economical management, but the question must arise, Is this a fitting punishment of crime? Before answering, it is necessary to note the fact, referred to above, that, the criminal law of this State being dominated by Puritanical influences, acts which in other States are only reprobated as *vices* are treated as crimes, rendering the guilty persons liable to long terms of imprisonment. The majority of the prisoners, therefore, have little in common so far as their character and habits are concerned with what is generally spoken of as the criminal class. The severer conditions of English prison life are not, therefore, needed ; and it would be useless to draw any comparisons. The institution is a model refuge for fallen, inebriate and criminally-disposed women. The wonder is that the State consents to bear the burden of an establishment so costly and so elaborate for the maintenance and care and disposal of a class of girls and women who in this country would hardly become a charge upon public funds at all.

PRISONS (TREATMENT OF CRIME)

Copy of Report of the Chairman of the Commissioners of Prisons upon the Treatment of Crime in the United States.

(*Sir Howard Vincent.*)

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